



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 4710

Ruben Hinojosa for Congress)
and Vickie L. Winpisinger, as treasurer)

Date: April 19, 1999

Alonzo Cantu Construction, Inc.)
and Alonzo Cantu, as an officer)

Chase Bank of Texas, N.A.)
(f/k/a Texas Commerce Bank))

STATEMENT OF REASONS

Vice-Chairman Darryl R. Wold
Commissioner Lee Ann Elliott
Commissioner David M. Mason
Commissioner Karl J. Sandstrom

On March 23, 1999, the Commission, by a vote of 4-2, found no reason to believe that Alonzo Cantu Construction, Inc. or Alonzo Cantu, as an officer ("Cantu Construction"), violated 2 U.S.C. §441b(a), and no reason to believe that Ruben Hinojosa for Congress or Vickie L. Winpisinger, as treasurer ("the Hinojosa committee"), violated 2 U.S.C. §441b(a), rejecting the recommendations of the General Counsel.¹

The Federal Election Campaign Act prohibits corporations from making contributions in connection with Federal elections 2 U.S.C. §441b(a). The Act also prohibits any officer of a corporation from consenting to any corporate contribution and prohibits any candidate or political committee from knowingly accepting or receiving a corporate contribution. *Id.* To effectuate this prohibition, corporations, including their officers, are prohibited from facilitating the making of contributions to candidates or to political committees 11 C.F.R. §114.2(f)

¹ Based on the General Counsel's recommendation, the Commission also found no reason to believe that Ruben Hinojosa for Congress and Vickie L. Winpisinger, as treasurer, violated 2 U.S.C. §441c, and no reason to believe that Chase Bank of Texas, N.A. (f/k/a Texas Commerce Bank, N.A.) violated 2 U.S.C. §441b(a) or §441c

Cantu Construction

On January 9, 1998, Alonzo Cantu hosted a fundraiser for Congressman Ruben Hinojosa at his home in McAllen, Texas. A complaint was filed with the FEC on January 12, 1998, alleging that Cantu, the president and half owner of Cantu Construction², had committed various violations of the Act.³

The Complainant's allegations were largely based on hearsay provided to the Complainant by an associate.⁴ This associate allegedly told the Complainant that Mr. Cantu had used "employees of his incorporated construction company to sell tickets" to the Hinojosa fundraiser.⁵

In an attempt to find support for this allegation, the Complainant directed one of his campaign volunteers, Lorraine Owens, to phone Cantu Construction, feign she was a Hinojosa supporter and inquire about getting tickets to the fundraiser.⁶

According to the complaint, when Ms. Owens called Cantu Construction, Mr. Cantu's secretary answered. Ms. Owens, stating she desired to purchase tickets to the Hinojosa fundraiser, waited on the line while the secretary called Mr. Cantu on his cell phone. The secretary allegedly acted as "an intermediary" between Ms. Owens and Mr. Cantu during Ms. Owens' inquiry about tickets to the fundraiser. The secretary allegedly told Ms. Owens that she could pick up the fundraiser tickets at the office, and that because the President of the United States was attending, if she decided to buy a ticket, she would have to fill out a Secret Service questionnaire. The secretary allegedly offered to fax the questionnaire to Ms. Owens, though a fax was apparently never sent.⁷

In his response to the complaint, Alonzo Cantu did not deny that a conversation had taken place between his secretary and an individual seeking a ticket, though neither he nor his secretary remembered speaking to anyone named Lorraine Owens. Mr. Cantu stated that his activity conducted on behalf of Congressman Hinojosa "was done as an individual and not as an officer or employee of a corporation," and the fact that he "earns his living as an owner and officer of a construction company does not deprive him of the right to engage in political activities as an individual." Mr. Cantu stated that he "may receive and transmit business communications,

² Cantu Construction is an incorporated general contractor with a total of 20 employees. The other half of Cantu Construction is owned by Lupe Cantu (Lupe Cantu born 1925, Alonzo Cantu born 1955) *Dun and Bradstreet, March 23, 1999.*

³ The complaint alleged, *inter alia*, that two Mexican nationals "had been pressured by employees of Texas Commerce Bank on bank premises into purchasing two [one]-thousand dollar tickets [to the Hinojosa fundraiser]. Other individuals with offices within the bank tower were also offered tickets by employees," in violation of 2 U.S.C. §441c and §441b(a) *Complaint, MUR 4710, page 1* As noted in footnote 1, the Commission found no reason to believe as to these allegations

⁴ The Complainant, Tom Haughey, was the congressional opponent of Congressman Hinojosa. Hinojosa defeated Haughey in the November 3rd, 1998, general election by a margin of 59% to 41% *First General Counsel's Report, MUR 4710, page 2, fn 3.* The associate noted above was Dan Bautista, the head of the Hidalgo County chapter of the Republican National Hispanic Assembly *Complaint, MUR 4710, page 1*

⁵ *Id*

⁶ *Id*

⁷ *Id*

personal communications, or political communications. This is true of any corporate executive who is active in support of a congressional candidate."⁸

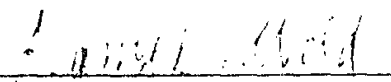
The Commission rejected, by a vote of 4-2, the General Counsel's recommendation to find reason to believe Cantu Construction, and Alonzo Cantu, as an officer, made in-kind contributions to the Hinojosa committee in violation of the Act. The Commission determined that the alleged corporate involvement in the fundraiser was so minor or incidental that it did not warrant further commitment of Commission resources. In addition, the Commission felt the actions of Mr. Cantu most likely fell within the safe harbor provision of 11 C.F.R. §114.9(a), allowing, "employees of the corporation [to] make occasional, isolated or incidental use of the facilities of the corporation for individual volunteer activity in connection with a Federal election."⁹


Hinojosa for Congress

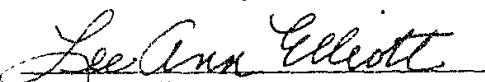
The General Counsel recommended the Commission find the above actions by Cantu Construction resulted in in-kind corporate contributions to the Hinojosa committee, and that the Hinojosa committee knowingly accepted these contributions. The General Counsel stated the committee's acceptance was knowing because of Alonzo Cantu's "apparently close relationship to the Hinojosa campaign, as evidenced by the fact that the fundraiser was held at his residence, and the possibility that Cantu was acting as an agent of the campaign for the collection and forwarding of contributions."¹⁰

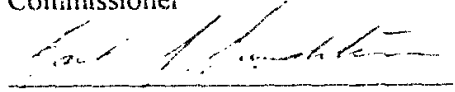
As noted above, the Commission did not find that Cantu Construction had made in-kind corporate contributions to the Hinojosa committee, and consequently a majority of the Commission rejected the General Counsel's recommendation to find the Hinojosa committee had knowingly accepted illegal contributions. Based on the evidence presented, a majority of the Commission also rejected the General Counsel's arguments that Alonzo Cantu was an agent of the Hinojosa committee and that Alonzo Cantu's knowledge of alleged corporate facilitation by Cantu Construction, even if proved, could have been imputed to the Hinojosa committee.

The Commission decided to close the file in this matter with respect to all respondents.¹¹


Darryl R. Wold
Vice-Chairman


David M. Mason
Commissioner


Lee Ann Elliott
Commissioner


Karl J. Sandstrom
Commissioner

⁸ *Response of Alonzo Cantu*, MUR 4710, page 2, March 24, 1998

⁹ 11 C.F.R. §114.9(a)

¹⁰ *First General Counsel's Report*, MUR 4710, page 15, March 16, 1999

¹¹ "This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce is a decision generally committed to an agency's absolute discretion." See *Hechler v. Cheney*, 470 U.S. 821, 831 (1985).